IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6320 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALANG MARINE LTD.

Versus

UNION OF INDIA (NOTICE TO BE SERVED THROUGH

Appearance:

1. Special Civil Application No. 6320 of 2002
MR DHAVAL M BAROT for Petitioner No. 1
MR SN THAKKAR for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 22/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The petitioner Alang Marine Ltd. has filed this petition under Article 226 and 227 of the Constitution of India challenging the impugned order dated 08.06.2001 passed on application no.E/ROA-196/2001/MUM in appeal no.ES156/2000-MUM filed before the Customs,Excise & Gold (Control) Appellate Tribunal (for short "CEGAT") (Annexure `N') and the impugned order dated 01.10.99 passed by the respondent no.2 in appeal no.COMMR(A)/55/RAJ/99 (Annexure `H'). By way of ad-interim relief, it was prayed that the impugned order dated 01.10.99, Annexure `H' passed by respondent in appeal be stayed.

#. When this matter was placed for the first time for admission before the Division Bench consisting of M.S.Shah and K.A.Puj,JJ) on 09.07.2002, the draft amendment dated 09.07.2002 was moved, by which the petitioner wanted to implead Superintendent of Customs, Bhavnagar as respondent no.3 and Dy.Commissioner of Customs, Bhavnagar as respondent no.4 to this petition and also prayed for amending the prayer clauses 19(bb) and 19(cc). It is a short draft amendment which we would like to reproduce herein :

" DRAFT AMENDMENT

I. Add the following parties as Respondent no.3 and 4 :

3. Superintendent of Customs,
Customs House, Parimal,
Bhavnagar.

4. Deputy Commissioner of Customs,
Custom House, Parimal,
Bhavnagar.

II. Add the following paras in the prayer para 19 of the petition :

(bb) that the Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondent nos. 3 and 4 to issue a certificate showing that additional duty of customs in the sum of Rs.29,81,000/- has been paid on the vessel M.V.Iron Thrust which has been used as input in the factory for breaking OR issue a duplicate copy of Bill of Entry duly certified to be true ;

(cc) that pending and hearing and final disposal of the present Writ Petition this Honourable Court be pleased to direct the respondent nos.3 and 4 to issue a certificate showing that additional duty of customs in the sum of Rs.29,81,000/- has been paid on the vessel M.V.iron Thrust which has been used as input in the factory for breaking OR issue a duplicate copy of Bill of Entry duly certified to be true ;

III. Amend prayer - para 19(d) and add or insert the Words "and (cc)" after clause (c) and before above".

#. On 09.07.2002, leave to amend was granted and accordingly respondent nos.3 & 4 were impleaded as party respondents and notice was ordered to be issued of this petition making it returnable on 22.07.2002 but without any interim or ad-interim order passed in favour of the petitioner. Thereafter, it appears from the order sheet of this petition that the matter was adjourned on 22.07.2002, 05.08.2002, 13.08.2002, 03.09.2002, 16.09.2002, 01.10.2002, 22.10.2002, 28.10.2002.

On 28.10.2002, while adjourning the matter to 02.12.2002 the Division Bench consisting of A.R.Dave and D.A.Mehta,JJ ordered the amendment to be carried out on or before 30.10.2002 and meanwhile by way of an interim order, it was ordered that no action for recovering the amount in question shall be taken by the respondent-authority.

#. It appears that initially draft amendment dated 09.07.2002 was granted on the same day i.e.09.07.2002 and on that very day respondent nos. 3 & 4 were joined as party-respondents to this petition but the amendment was not carried out by which the permission was granted to amend prayer clauses (bb) and (cc). Under the High Court Rules, if the amendment is not carried out within a particular time, then automatically it lapses. It is only because of this, another Division Bench had passed the order on 28.10.2002 granting the permission to carry out the amendment on or before 30.10.2002 and accordingly prayers (bb) and (cc) were amended only on 28.10.2002. Thereafter, the matter was adjourned from time to time and on 09.12.2002, Division Bench of this Court admitted the petition and fixed it for final disposal on 26.12.2002 and ad-interim relief granted earlier was ordered to continue till then which was continued from time to time thereafter.

#. Today, this matter is listed on our final hearing

board for the 32nd time. Senior advocate Mr. Mihir Thakore for Mr.Manav Mehta for the petitioner vehemently pressed his amended prayers 19(bb) and (cc). It is true that these two prayers were already ordered to be amended by the Division Bench of this Court but there was no base in the petition whatsoever by way of amendment. In absence of any base in the petition, no prayer can be granted. Realising this, Mr.Thakore learned senior advocate submitted that he may be given an opportunity to file an application for amending the petition suitably by raising the contentions in the petition which has to be rejected in view of the fact that this petition is of 2002 and the petitioner is enjoying interim relief since 28.12.2002 whereby the respondents are restrained from taking any action for recovering the amount which runs into lacs of rupees from the petitioner and that the petitioner had enough opportunity to amend the petition suitably. Apart from this, even if there was some base in the petition, then also such a prayer made in 19(bb) and (cc) could not have been granted by this court in view of the fact that bill of entry was lost by the petitioner way back in 1993 and as stated earlier by way of this petition, the petitioner has challenged the order dated 01.10.99 Annexure `H' passed by respondent no.2 in appeal and subsequent order dated 08.06.2001 Annexure `N' passed on application filed in appeal before the CEGAT.

#. It may be stated that senior advocate Shri Thakore has tried to assail the impugned order dated 01.10.99 Annexure `H' passed by the respondent no.2 on the ground that the petitioner was not given copy of the document i.e. bill of entry which was lost by the petitioner. He submitted that if the copy of the bill of entry was supplied to the petitioner, then the impugned order at Annexure `H' dated 01.10.99 passed by the respondent no.2 would not stand. All the orders passed by the subordinate authorities have emerged into the last order passed by the appellate Tribunal in appeal which was dismissed by the appellate Tribunal on 08.06.2001 (Annexure `N').

#. From the impugned order at Annexure `N' dated 08.06.2001 passed by the appellate Tribunal, it clearly appears that the Tribunal had passed an order dated 27.10.2000 (Annexure `K') on stay application no.153 of 2000 filed in appeal no.156 of 2000 disposing of the application for waiver of pre-deposit filed by the petitioner and due to non-compliance of that order, the appeal was required to be dismissed and it appears from the impugned order at Annexure `N' passed by the learned appellate Tribunal that the appellate Tribunal dismissed

the appeal by observing that the attempts were made to delay disposal of their case. Once, pre-deposit order is passed by the appellate Tribunal and if it is not complied, then appeal is required to be dismissed and it was dismissed by the appellate Tribunal.

However, senior advocate Shri Thakore had made an attempt to challenge the impugned order dated 01.1099 Annexure `H' passed by the respondent no.2 in this writ petition treating this court as a court of appeal forgetting the fact that he has filed this writ petition before this court under Article 226 and 227 of the Constitution wherein the court has to exercise its writ jurisdiction and not the appellate jurisdiction. Though the petitioner has labelled this petition as petition under Article 226 and 227 of the Constitution of India, strictly speaking it is a petition under Article 227 and this court has to see whether the appellate Tribunal while dismissing the appeal, committed any, jurisdictional error or not.

#. This brings us to the another challenge made by the petitioner challenging the impugned order dated 08.06.2001 Annexure `N' passed by the appellate Tribunal. It is clear from the impugned order at Annexure `N' passed by the appellate Tribunal that it dismissed the appeal of the petitioner for non-compliance of an order dated 27.10.2000 Annexure `K'by which the Tribunal had disposed of stay application of waiver of pre-deposit of the petitioner. It clearly appears that the only intention of the petitioner was to delay and, therefore, the appellate Tribunal rightly dismissed the appeal by observing that their attempts were to delay the disposal of the case which is very much clear in this petition also.

#. In view of the above discussion, this petition fails and is hereby dismissed. Rule discharged with costs. Ad-interim relief granted earlier stands vacated.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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